

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14924 of Margaret L. Weaver, et al., pursuant to 11 DCMR 3108.1, for a special exception under Section 213 to continue the use as a parking lot in an R-2 District at premises 3831 McKinley Street, N.W., (Square 1860, Lots 5-7, 17 and 18).

HEARING DATE: January 25, 1989

DECISION DATE: March 1, 1989

FINDINGS OF FACT:

1. The subject property is located on the northeast corner of the intersection of McKinley and 39th Streets, N.W. It is in an R-2 zone district at premises known as 3831 McKinley Street, N.W.
2. The property is used as accessory parking for Magruder's food store located at 5262 Connecticut Avenue, N.W., at the front of the parking lot. The lot is reasonably necessary to the operation of the food store. The food store parking lot is located in its entirety within 200 feet of the food store which it serves.
3. The parking lot was originally established by BZA Order No. 5664, dated November 17, 1959. It is currently operating pursuant to BZA Order No. 14183, dated November 23, 1984. The Board approved the continued use of the parking lot subject to 15 conditions. The conditions were as follows:
 - a. Approval shall be for a period terminating on June 27, 1988.
 - b. A parking attendant from Magruder's shall be present on the lot during all hours of operation and shall assist in keeping the alley clear of vehicles.
 - c. The parking attendant shall assist in the movement of traffic from McKinley Street into the parking lot and shall coordinate with enforcement agencies regarding the traffic regulations existing on McKinley Street.
 - d. Parking on the subject lot shall be exclusively

for patrons of Magruder's supermarket, except that on Sundays only five spaces shall be reserved for employees of Magruder's. A sign indicating such restriction shall be posted on the lot.

- e. The parking lot, the retaining wall, and the adjacent landscaping shall be maintained, policed, and kept in prime condition. Policing of the lot shall include retrieval of Magruder's shopping carts from neighborhood streets and the removal of debris from the alleys and areas immediately adjacent to the lot. Such policing shall occur at least twice a day.
- f. Damage done by delivery vehicles to sidewalks and neighboring property shall be repaired promptly by the applicant or the tenant.
- g. No discharges from store operations shall be flushed into the alley or the street.
- h. The lot shall be secured with a gate, chain or cable during all hours that it is not in operation. The hours of operation of the parking lot shall not exceed from 7:00 A.M. to 10:00 P.M. Monday through Saturday, and from 8:30 A.M. to 9:00 P.M. on Sunday.
- i. Such deliveries to the supermarket which occur from the lot shall be limited to the hours from 7:00 A.M. to 9:00 P.M., Monday through Saturday, and from 10:00 A.M. to 9:00 P.M. on Sunday. All vendors shall be instructed that no horn blowing is allowed at any time. Store personnel should be signalled through alternative means provided by Magruder's.
- j. Existing gaps in shrubs or landscaping shall be in-filled or repaired promptly and as needed. Flower beds shall be mulched twice a year. Grass areas shall be seeded and mowed. Leaves shall be raked as needed. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. The plantings along 39th and McKinley Streets shall be as dense as possible. Landscaping plans shall be approved by the D.C. Department of Public Works.
- k. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- l. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

- m. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
- n. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such other structure is otherwise permitted in the zoning district in which the parking lot is located.
- o. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

4. Ingress to the lot is by a driveway directly from McKinley Street. Egress is at the north end of the lot into the fifteen foot public alley, then out to 39th Street.

5. The parking lot is open from 7:00 A:M to 10:00 P.M., Monday through Saturday, and from 8:30 A.M. to 9:00 P.M. on Sunday. The lot is secured with a chain or cable during all hours it is not in operation.

6. At the public hearing, the applicant reviewed all the conditions imposed by the Board in its last Order and affirmed that it was in compliance. The Board noted certain discrepancies, hereinafter discussed by the ANC report and the opposition.

7. The applicant requested the Board to permit the continuation of the parking lot for a period of five years to help allay the cost of planned capital improvements to the food store in the near future.

8. The prior approval for the continuance of the parking lot expired on June 27, 1988. The applicant filed the instant application on August 19, 1988. The applicant was advised by the Zoning Administrator on July 6, 1988 that the Certificate Occupancy had expired on June 27, 1988. The Board hereby admonishes the applicant for operating the parking lot without a valid Certificate of Occupancy and requests that future applications be filed prior to the termination date of any prior approvals.

9. The Office of Planning (OP), by memorandum dated January 18, 1989, recommended that the application be approved with the conditions previously imposed by the Board in its Order No. 14183. The OP was of the opinion that the continued use of the parking lot would not create any deleterious impact on adjacent and nearby properties with proper supervision. The Board concurs with the recommendation of the Office of Planning.

10. The Department of Public Works (DPW), by memorandum dated December 7, 1988, offered no objection to the continued use of the parking lot. The DPW observed that the lot was clean, well-maintained and operated by a parking attendant. The DPW was of the opinion that the lot was in full compliance with the conditions and requirements established in previous Board orders for the lot.

11. Advisory Neighborhood Commission 3G, by letter dated January 13, 1989, reported that it recognized that Magruder's is a thriving commercial enterprise and as such requires reasonable parking facilities. At the same time, however, this store has expanded its business and thus continues to generate substantial parking and vehicular traffic problems in the immediately adjacent area, which is composed of single family residences and a neighboring commercial area. Consistent with its past position, the ANC opposed the grant of the special exception unless the following conditions are met:

- a. Magruder's agrees to do the following within thirty (30) days of BZA approval:
 - i. Install and maintain improved, professionally lettered traffic signage indicating the entrance and exit to the lot and from the lot and take all necessary actions in working with pertinent city agencies to ensure that all public space signs prohibiting a left turn from McKinley Street are maintained. Magruder's also agrees to install appropriate signs that will advise vehicle drivers not to block the sidewalk;
 - ii. With the consent of appropriate D.C. agencies, place a decorative boulder (or some equally sturdy deterrent) in the ruts adjacent to the McKinley Street entrance to the lot, or to improve this area with a permanent surface so that ruts do not develop when vehicles traverse the area.
- b. Magruder's agrees to make the following changes in its operations, effective immediately:
 - i. Direct all suppliers and vendors who deliver to the store between the hours of 8:00 P.M. and 6:00 A.M. daily and Sunday to unload (or load) and deliver only through the Connecticut Avenue entrance (and not from the lot or the adjacent alley).

Further, Magruder's will advise all suppliers and vendors to comply with all applicable District of Columbia traffic and parking regulations, and will direct their suppliers and vendors to instruct

their employees to so comply. More specifically, these suppliers and vendors should instruct their employees not to park or stand on McKinley Street, 39th Street, Northampton Street, or any of the nearby alleys at any time.

The Magruder's management agrees to send written instructions of the above to its suppliers and vendors and to send copies of said instructions to ANC 3G.

- ii. Collect grocery carts from the neighborhood at least three (3) times daily.
- iii. Commit to the proper gardening, mulching, and trimming of trees surrounding the entire lot by store employees or professionally (the ANC prefers the latter) at least four (4) times per year and to mow the grass. This means that the grass is mowed once a week in the Spring growing season and once every two (2) weeks thereafter.
- iv. Provide traffic supervision during all business hours to monitor the entry of cars from McKinley Street into the lot. The traffic attendant shall be instructed to facilitate the safe entrance of vehicles from McKinley Street into the parking lot with special attention to pedestrian safety and to facilitate the smooth flow of traffic within the parking lot, with particular emphasis on achieving the conditions stated immediately above. The traffic attendant will be stationed near the entrance to the lot whenever possible.
- v. Provide whatever improvements are necessary for the outflow of traffic from the lot onto 39th Street so that trucks exiting do not cross the west curb of 39th Street. Magruder's agrees to widen the concrete apron at its expense, after securing the necessary D.C. government permits, if other methods of traffic control on 39th Street are not sufficient to eliminate the passage of trucks over the west curb.
- vi. The lot shall be secured with a gate, chain or cable during all hours that it is not in operation. The hours of operation shall not exceed from 7:00 A.M. to 9:00 P.M., Monday through Saturday, and from 9:00 A.M. to 6:00 P.M. on Sunday.

- vii. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- viii. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- ix. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over public space.
- x. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
- xi. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.
- xii. Maintain the entire lot and the area surrounding it in a sanitary condition at all times by monitoring its condition three (3) times daily and removing trash as necessary.
- xiii. No discharges from store operations shall be flushed into the alley or into the street.
- xi. Parking on the subject lot shall be exclusively for patrons of Magruder's grocery and liquor store. Signs indicating such restrictions shall be posted in the lot.
- xv. Remove all snow and ice promptly after accumulation from all sidewalks around the parking lot as well as from the front of the store.
- c. Magruder's agrees to have one (1) or more of its representatives meet at least quarterly with representatives of the neighborhood and the ANC representative from Single Member District (SMD) 3G06 to mitigate the impact of the store's operation on the neighborhood. The time and place of the meeting will be set by the ANC representative after consultation with the other parties.

It is understood that the purpose of the meeting is to facilitate the discussion of matters of mutual concern. Decisions or agreements that may be reached by the neighborhood representatives and Magruder's, with or without the aid and/or agreement of the SMD 3G06 representative, are not binding on the ANC.

The ANC further recommended that, provided the above conditions are agreed to by the applicant, that special exception approval be limited to a period of two years from the date of expiration of the previous approval.

12. Two single member District Commissioners of ANC 3G submitted a minority report supporting a four-year continuation of the parking lot. The minority commissioners report that the applicant has made substantial progress in meeting the conditions set in the Board's prior order. The minority commissioners recommended that the other conditions suggested by the ANC be adopted by the Board.

13. The record contains a petition of approximately 1,000 signatures of customers of the food store in support of the application.

14. Several nearby property owners testified at the public hearing in opposition to the application. The opposition was generally based on the following:

- a. The applicant has not diligently complied with all of the conditions of the previous order.
- b. The applicant did not file for continuance of the parking lot in a timely manner.
- c. The public space and landscaped area adjacent to the lot are not properly maintained, kept free of trash, and cleared of snow promptly.
- d. Damage to curbs, grassed areas and sidewalks caused by large vehicles entering the lot from McKinley Street have not been promptly repaired.

15. The representative of Magruder's testified that he endorsed and accepted the conditions recited by the ANC. He further testified that a liaison would be established by Magruder's with the neighboring citizens so that all complaints about the operation and maintenance of the lot would come directly to him. He reaffirmed that it was the policy of Magruder's to cooperate with the neighborhood and be a good neighbor.

16. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. The Board in addressing such, as well as those of the other opposition,

finds that it concurs with the ANC reasoning and recommendation. The store is an asset and significant benefit to the neighborhood. The store needs parking to serve its customers, and further to avoid unnecessary spillover parking into the residential areas to the west. However, the Board finds that because of the adjacency of single family homes, strict controls must be placed on the operation of the lot. In granting this application, the Board will impose conditions to incorporate the main concerns of the opposition.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 213 and that the relief requested under Sub-section 3108.1 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

The Board concludes that the application meets the standards for the granting of the requested special exception. The lot is located within 200 feet of an existing commercial district and is separated only by an alley from such commercial district. The subject lot is reasonably necessary and convenient to the neighborhood, and is so located and all facilities thereof are so designed that they are not likely to become objectionable to adjoining or nearby properties because of noise, traffic, or other objectionable conditions if the conditions to be imposed on this application are met. The Board further concludes that it has given great weight to the issues and concerns of the ANC. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of THREE YEARS terminating on June 27, 1991.
2. A parking attendant from Magruder's shall be present on the lot during all hours of operation and shall assist in keeping the alley clear of vehicles.
3. During the business hours, the parking attendant shall monitor the entry of cars from McKinley Street into the lot. The parking attendant shall be instructed to facilitate the safe entrance of vehicles from McKinley Street into the parking lot with special attention to pedestrian safety and to facilitate the smooth flow of traffic within the parking lot, with particular emphasis on achieving

the conditions stated immediately above. The parking attendant will be stationed near the entrance to the lot whenever possible.

4. Parking on the subject lot shall be exclusively for patrons of Magruder's supermarket, except that on Sundays only five spaces shall be reserved for employees of Magruder's. A sign indicating such restriction shall be posted on the lot.
5. The parking lot, the retaining wall, and the adjacent landscaping shall be maintained, policed, and kept in prime condition. Policing of the lot shall include retrieval of Magruder's shopping carts from neighborhood streets and the removal of debris from the alleys and areas immediately adjacent to the lot. Such policing shall occur at least three (3) times a day.
6. Damage done by delivery vehicles to sidewalks and neighboring property shall be repaired promptly by the applicant or the tenant.
7. No discharges from store operations shall be flushed into the alley or the street.
8. The lot shall be secured with a gate, chain or cable during all hours that it is not in operation. The hours of operation shall not exceed 7:00 A.M. to 9:00 P.M. Monday through Saturday, and from 9:00 A.M. to 6:00 P.M. on Sunday.
9. Such deliveries to the supermarket which occur from the lot shall be limited to the hours from 7:00 A.M. to 9:00 P.M., Monday through Saturday, and from 10:00 A.M. to 9:00 P.M. on Sunday. All vendors shall be instructed that no horn blowing is allowed at any time. Store personnel should be signalled through alternative means provided by Magruder's.
10. There shall be proper gardening, mulching, and trimming of trees surrounding the entire lot by store employees or a professional landscaping company at least four (4) times per year. Existing gaps in shrubs or landscaping shall be in-filled or repaired promptly and as needed. Flower beds shall be mulched twice a year. Grass areas shall be seeded and mowed. Specifically, grass shall be mowed once a week in the Spring growing season and once every two (2) weeks thereafter. Leaves shall be raked as needed. Landscaping shall be maintained in a healthy growing condition and in a neat and

orderly appearance. The plantings along 39th and McKinley Streets shall be as dense as possible. Landscaping plans shall be approved by the D.C. Department of Public Works.

11. Additional natural screening, such as cypress bushes or other hedges, will be provided for the McKinley Street and 39th Street sides of the parking lot where natural screening is not now provided.
12. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
13. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
14. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
15. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such other structure is otherwise permitted in the zoning district in which the parking lot is located.
16. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.
17. Applicant should install and maintain professionally lettered traffic signage indicating the entrance and exit to the lot and take all necessary actions in working with pertinent city agencies to ensure that all public space signs prohibiting a left turn from McKinley Street are maintained. The lessee also agrees to install appropriate signs that will advise vehicle drivers not to block the sidewalk.
18. With the consent of appropriate D.C. agencies, the applicant shall place a decorative boulder, or some equally sturdy deterrant, in the ruts adjacent to the McKinley Street entrance to the lot, or to improve this area with permanent surface so that ruts do not develop when vehicles traverse the area.

19. All suppliers and vendors shall be directed to deliver to the store between the hours of 8:00 P.M. and 6:00 A.M. daily and Sunday to load or unload and to deliver only through the Connecticut Avenue entrance and not from the lot or the adjacent alley.
20. Improvements shall be made, as necessary, for the outflow of traffic from the lot onto 39th Street so that trucks exiting do not cross the west curb of 39th Street. Magruder's agrees to widen the concrete apron at its expense, after securing the necessary D.C. government permits, if other methods of traffic control on 39th Street are not sufficient to eliminate the passage of trucks over the west curb.
21. Snow and ice shall be removed promptly after accumulation from all sidewalks around the parking lot as well as from the front of the store.
22. The applicant shall designate at least one community liaison representative who shall meet with representatives of the neighborhood and the ANC representative for Single Member District 3G06 at least four times a year in order to mitigate the impact of the operation of the parking lot on the neighborhood. The time and place of the quarterly meetings shall be set by the ANC representative in cooperation with all affected parties.

VOTE: 4-0 (William F. McIntosh, Paula L. Jewell and Carrie L. Thornhill to grant; John G. Parsons to grant by proxy; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

AUG 18 1989

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14924order/BHS7

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14924

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated AUG 18 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Leonard L. McCants
McCants & Gerald
8701 Georgia Avenue, Suite
Silver Spring, MD

Alan Beach, Chairman
ANC 3G
P.O. Box 6252
Northwest Station
Washington D.C. 20015

Amarjeet Singh
5600 39th Street., N.W.
Washington, D.C. 20015

Peter Sczudlo
3913 McKinley Street., N.W.
Washington, D.C. 20015

Gregory Power
3321 McKinley Street., N.W.
Washington, D.C. 20015

Yvon & Kathy LeDain
3836 McKinley Street., N.W.
Washington, D.C. 20015

Mary Rowse
3706 Morrison Street., N.W.
Washington, D.C. 20015

A handwritten signature in dark ink, appearing to read "Ed Curry", written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: AUG 18 1989